

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

GA HO KIM,

Plaintiff,

-against-

DKCOSMETICS; DKCOS CORP.; CLUB CLIO  
CORP.; CLUB CLIO NYC CORP.; JONG KYUN  
("JOHN") LEE and JOHN DOES 1-10 (said names  
being fictitious); and JOHN ROE CORPS. 1-10 (said  
names being fictitious),

Defendants.

Case No.: 1:19-cv-09079

CIVIL ACTION

To: Former and Current employees of DKCOSMETICS, DKCOS CORP., CLUB CLIO  
CORP., and/or CLIO NYC CORP.

**COURT AUTHORIZED NOTICE OF YOUR RIGHTS**  
**REGARDING PENDING CLAIM CONCERNING YOUR WAGES**

If you worked at DKCOSMETICS, DKCOS CORP., CLUB CLIO CORP., and/or CLIO  
NYC CORP. (collectively "Defendants") in the State of New York as a non-executive, non-  
administrative, or non-professional employee (assistant store manager, warehouse worker, or  
office employee) ("non-exempt employee") between September 30, 2016 and the present, the  
above-captioned pending lawsuit may affect your legal rights. If you were or are such an  
employee of Defendants, please read this Notice.

*Important: You are NOT being sued. This Notice is NOT a solicitation from a lawyer.*

- The purpose of this Notice is to inform you that Mr. Ga Ho Kim ("Mr. Kim") has  
filed a lawsuit against Defendants as a collective action on behalf of other similarly  
situated employees who were or are employed by Defendants between September 30,  
2016 and the present ("Collective Action").
- Mr. Kim alleges that he is a former employee of Defendants and that he was hired as  
an employee in Defendants' retail storefront and as a warehouse laborer.
- Mr. Kim further alleges that he worked more than forty (40) hours on some or all  
weeks during which he was employed by Defendants.
- Mr. Kim further alleges he was compensated at a fixed salary and that Defendants  
failed to pay him overtime wages, as required by the Fair Labor Standards Act (29  
U.S.C. § 201, *et seq.*) and the New York Labor Law § 190, *et seq.* and their  
supporting regulations.

- Mr. Kim further alleges that there are other individual former and current employees of Defendants who have been subject to similar employment and wage payment practices of Defendants.
- Defendants deny Mr. Kim's allegations and any wrongdoing and maintain that they paid and pay all their employees in compliance with federal and state law.
- The Court has not decided whether Plaintiff or Defendants are correct regarding the merits of the allegations and/or denials. The Court has not decided whether Plaintiff or Defendants are correct regarding any person who has received or will be receiving this Notice. However, if you worked or are working for any Defendant at any time between September 30, 2016 and the present, your legal rights may be affected, and you have a choice to make now:

YOUR LEGAL RIGHTS AND OPTIONS IN THE COLLECTIVE ACTION Brought under the Fair Labor Standards Act, 29 U.S.C. §§ 216(b)	
ASK TO BE INCLUDED (Sign and return the attached form)	<p>Join the Collective Action:</p> <p>If you choose to be included in this Collective Action, you must complete the consent form at the end of this Notice, and send it to the address stated therein by [Date 1]. If the claim is successful, you may be entitled to damages and may share in any proceeds from a settlement or judgment, but you give up any rights to separately sue Defendants for the same legal claims in this lawsuit. If you choose to join in this lawsuit, you may be required to participate in discovery, including by providing deposition and trial testimony.</p>
CHOOSE NOT TO BE INCLUDED (Do nothing)	<p>Do not join the Collective Action:</p> <p>By not doing anything in response to this Notice, you will not be included in the Collective Action. You will retain your rights to separately sue Defendants for the claims asserted in the Collective Action.</p>

## BASIC INFORMATION

### 1. Why did I get this Notice?

You are receiving this Notice because either Plaintiff's or Defendants' records show that you may have worked for one or more Defendants as a non-exempt employee at some point between September 30, 2016 and the present. Mr. Kim and Defendants have agreed to send you this Notice so you can decide whether to join or not join in the Collective Action.

### 2. What is the purpose of this notice?

This notice is for the sole purpose of notifying you that Mr. Kim filed the Collective Action and to determine those persons who wish to join the Collective Action.

### 3. What is a collective action and who is involved?

In a collective action lawsuit, one or more persons can bring a lawsuit on behalf of others who have similar claims. The individual who brought this lawsuit is called the plaintiff. The corporate entities and individuals that are being sued are called the defendants. One court resolves the issues for everyone who decides to join the lawsuit.

You are not currently part of the Collective Action. To join this case as a plaintiff, your "Consent to Sue" form must be completed and sent to Mr. Kim's counsel, Kim, Cho & Lim, LLC ("KCL"), by [Date 1] and KCL will file the consent to join form by [Date 2] on your behalf.

### 4. Why is this lawsuit a collective action?

The Fair Labor Standards Act § 216(b) permits this kind of lawsuit to be filed as a "collective action," which permits one or more plaintiffs to start a lawsuit and permit other "similarly situated" individuals to join the case as plaintiffs. Mr. Kim has decided to file this lawsuit as a collective action on behalf of other former and current employees of Defendants who were or are similarly situated as he was.

### 5. If I join, will there be any impact on my employment?

Federal and state law prohibits Defendants from terminating your employment, otherwise instituting adverse employment action, or otherwise "retaliating" against you for joining this action or otherwise exercising your rights under the law. 29 U.S.C. 215(a)(3) and N.Y. Lab. Law § 215(1)(a).

If you believe you have been retaliated against, or if you are threatened with retaliation, for joining the Collective Action, you may consult a lawyer about your retaliation claims against Defendants.

### 6. Can I join the Collective Action regardless of my immigration status?

Yes. Your rights under the federal and state laws are protected regardless of your immigration status. You may join the Collective Action regardless of your immigration status and receive your portion of the settlement or judgment in the Collective Action, if any. Your participation in the Collective Action will not impact your immigration status or pending or anticipated immigration applications.

## CLAIMS IN THE LAWSUIT

### 7. What is this collective action lawsuit about?

Mr. Kim, the plaintiff, alleges as follows:

- Mr. Kim was hired by Defendants to work at various retail and warehouse locations;
- Under Defendants' employ, Mr. Kim was paid a fixed salary;
- Mr. Kim understood that his salary was to compensate him for forty (40) hours of work per week;
- Under Defendants' employ, Mr. Kim worked more than forty (40) hours in a workweek on at least one instance;
- Under Defendants' employ, Mr. Kim was not compensated any overtime premium for the work performed in excess of forty (40) hours in a workweek.

Mr. Kim further alleges that the above-alleged practices are unlawful under the federal Fair Labor Standards Act (29 U.S.C. § 201, *et seq.*) and the New York Labor Law (N.Y. Lab. Law § 190, *et seq.*). Mr. Kim is seeking to recover his unpaid overtime wages, an equal amount in liquidated damages, prejudgment interest, costs of the lawsuit, and reasonable attorneys' fees.

Defendants deny all the substantive allegations asserted by Mr. Kim and further deny that Mr. Kim and the collective class is entitled to any recovery.

An online copy of Mr. Kim's complaint filed with the United States District Court for the Southern District of New York may be found at:

<https://www.dropbox.com/s/uyi6m8s0kw6peh8/Complaint.pdf?dl=0>

### 8. Has the Court decided who is right?

No. At this time, the Court has not decided whether Defendants violated any law. The Court has also not decided whether Mr. Kim's allegations are true.

### 9. How and when will the Court decide who is right?

The Court will decide at trial after Plaintiff(s) and Defendants attempt to prove their claims and defenses at trial, unless the parties settle before the trial date. A trial date has not been scheduled. During a trial, the Court would hear all of the evidence to help it decide whether Plaintiff(s) or Defendants are right about the claims in the Collective Action. There is no guarantee that Plaintiff(s) will win or that they will get any money.

### 10. If I join, will I get money after trial?

There is no guarantee that you will be paid any money by joining the Collective Action. If you join the Collective Action and Plaintiff(s) are entitled to any money as a result of settlement or judgment in the Collective Action, you will be paid your portion of the payment, as approved by the Court.

### 11. If I join, when will I get money from the Collective Action?

Again, there is no guarantee that you will get any money from the Collective Action. If you are entitled to any, you will be receiving the money when the parties settle or after the Court

enters a judgment at trial. The parties do not know whether they will settle. Any settlement must be approved by the Court. The trial date has not been scheduled yet.

### YOUR RIGHTS AND OPTIONS

#### 12. Am I eligible to join the Collective Action?

You are eligible to join the Collective Action if the following conditions are applicable to you, and you are not otherwise ineligible as set forth below:

- You worked or are working for any Defendant at any point in time between September 30, 2016 through the present; and
- You were paid a fixed daily, weekly, bi-weekly, semi-monthly, monthly, or annual salary; and
- You understood that the fixed salary would compensate you for forty (40) hours of work in a given workweek; and
- While working for one or more Defendant, you worked more than forty (40) hours in a given workweek; and
- You were not paid overtime wages for any work hours in excess of forty (40) in a given workweek.

You are **ineligible** to join the Collective Action if the following conditions apply to you:

- You did not work for any Defendant between September 30, 2016 and the present; or
- You were hired by Defendants as an executive employee, with authority to hire and fire other employees, set employees' wages, and set employees' work schedules *and* you were paid a weekly fixed salary above \$684 per week or a semi-monthly salary of \$1,482; or
- You were hired by Defendants as an administrative employee, with authority to exercise discretion and independent judgment concerning significant matters of Defendants' business *and* you were paid a weekly fixed salary above \$684 per week or a semi-monthly salary of \$1,482; or
- You were hired by Defendants as a professional employee *and* you were paid a weekly fixed salary above \$684 per week or a semi-monthly salary of \$1,482; or
- You were hired by Defendants as an outside salesperson.

If you are unsure about your eligibility to join the Collective Action, you can get free help by calling Mr. Kim's lawyers, Kim, Cho & Lim, LLC, at (201) 585-7400 or writing an email to [CollectiveAction@kcllawfirm.com](mailto:CollectiveAction@kcllawfirm.com).

#### 13. How do I join the Collective Action?

To join the Collective Action, you need to complete, sign, and return the "Consent to Join" form attached to this Notice and mail it to Mr. Kim's lawyers, Kim, Cho & Lim, LLC at the address below:

Kim, Cho & Lim, LLC  
Attn: Seokchan Kwak, Esq.  
Re: DKCOSMETIC Collective Action

460 Bergen Boulevard, Suite 305  
Palisades Park, New Jersey 07650

You may also fax the “Consent to Join” form to (201) 585-7422 or scan and email to [CollectiveAction@kcllawfirm.com](mailto:CollectiveAction@kcllawfirm.com).

The completed and signed “Consent to Join” form must be delivered to Mr. Kim’s counsel by [Date 1].

**14. How do I not join the Collective Action?**

Currently, if you did not send the “Consent to Join” form to Mr. Kim’s lawyers, you have not joined the Collective Action. If you do nothing in response to this Notice, you will not have joined the Collective Action

**If you join the Collective Action**

**15. What are the effects of joining the Collective Action?**

If you join the Collective Action and there is a resolution favorable to Mr. Kim, whether by settlement or judgment at trial, you may be entitled to some portion of the recovery. If you are entitled to any recovery, Mr. Kim’s lawyers will notify you using the information you enter in the “Consent to Join” form.

If you join the Collective Action, you will be bound by any ruling, settlement, or judgment, whether favorable or unfavorable, that are agreed to or entered in the Collective Action. Regardless of whether Plaintiff(s) win or lose, you will not be able to sue again, or continue suing, Defendants as a part of any other lawsuit about the claims asserted in the Collective Action.

While the Collective Action is pending, you may be asked to provide documents or information relating to your employment with Defendants. This may include answers to written questions, answering questions in-person during depositions, or providing testimony at trial. For this reason, you should preserve all documents relating to Defendants that are currently in your possession.

By joining the Collective Action, you designate Mr. Kim or his counsel, to the fullest extent possible, to make decisions on your behalf concerning the case, the method and manner of conducting the case, the terms of the settlement, and all other matters about the Collective Action and the resolution thereof. Decisions made and agreements entered into by Mr. Kim and/or his lawyers relating to the Collective Action will be binding on you if you join the Collective Action. You will also be bound to the fee arrangement between Mr. Kim and his lawyers. For more information on this fee arrangement, see below section “18. How will the lawyers be paid?”

**16. Will I need to hire a lawyer if I join?**

No. Mr. Kim’s lawyers, Joshua Lim, Esq. and Seokchan (Sean) Kwak, Esq. of Kim, Cho & Lim, LLC will be representing the individuals who join the Collective Action, unless any individual joining decided to retain their own lawyer.

17. Can I hire my own lawyer?

If you wish, you may join the Collective Action by hiring a lawyer of your own choosing. If you decide to join the Collective action through a lawyer other than Kim, Cho & Lim, LLC, your lawyer must file the “Consent to Join,” with an indication that you are hiring your own lawyer, with the Court by [Date 2].

The address of the Court is:

United States District Court  
Southern District of New York  
Attn: Hon. Jesse M. Furman, U.S.D.J.  
40 Centre Street, Courtroom 1105  
New York, New York 10007

The “Consent to Join” form may also be filed via the Court’s Electronic Case Filing system online.

You may also represent yourself as a *pro se* in the Collective Action, without the assistance of any lawyer. In this case, too, you must file the “Consent to Join” form, with the indication that you are joining as a *pro se*, with the Court by [Date 2].

18. How will the lawyers be paid?

If you join the Collective Action and have Mr. Kim’s lawyer represent you, you will be bound by the fee arrangement agreed to between Mr. Kim and his lawyer. Mr. Kim’s lawyer agreed to represent Mr. Kim and the collective class in the Collective Action on a contingency basis. This means that Mr. Kim’s lawyers will take, as their legal fees, the greater of (a) one-third of the net recovery resulting from settlement/judgment; or (b) the legal fees awarded by the Court resulting from application(s) made to the Court for legal fees pursuant to the applicable statutes; or other amounts as approved by the Court. Net recovery means the total amount of recovery minus costs of the lawsuit.

If Plaintiff(s) do not obtain a favorable result and/or obtain no recovery in the Collective Action, Mr. Kim’s lawyers will not be receiving any fees. Mr. Kim and you will not be incurring any out-of-pocket expenses.

If you choose to retain your own lawyer to represent you in the Collective Action, you will be responsible for any fee arrangement you may have with your lawyer.

19. Will I need to appear in Court?

If you join the lawsuit, you may need to provide written answers to written questions before trial. You may also need to appear outside of the court for depositions and provide oral testimony in response to Defendants’ lawyers’ questions. If the Collective Action is tried, you may need to appear in Court to provide oral testimony at trial.

Even if you do not join the Collective Action, you may be subpoenaed for documents or information regarding the Collective Action if Mr. Kim’s lawyers or Defendants’ lawyers determine that you have information and documents relevant to the Collective Action.



**20. Can I be removed from the Collective Action after I join?**

This notice is sent to you after the parties have stipulated to conditional certification of the collective class. Defendants may, before the trial, apply to the Court to *decertify* the collective Class. The Court may also decline to grant a final certification of the collective class before trial. If Defendants are successful in their application or if the Court declines to grant the final certification, some or all of the individuals who joined the Collective Action may be removed from the lawsuit.

If and when you are removed from the Collective Action, it would be as though you had never joined the Collective Action and you may separately and independently assert claims against Defendants as permitted by law.

**If you do NOT join the Collective Action**

**21. What are the effects of not joining the Collective Action?**

If you choose not to join the Collective Action, you will not get any money from the Collective Action even if Plaintiff(s) would be entitled to payment as a result of settlement or trial in the lawsuit.

By not joining the Collective Action, you will not be bound by any of the Court's orders and judgment or settlement reached in the Collective Action. You may independently and separately sue Defendants for your claims to the extent permitted by law.

If you have a pending lawsuit asserting claims identical or similar to those asserted in the Collective Action against Defendants, you should not join the Collective Action. If you want to initiate your own lawsuit against Defendants, you should not join the Collective Action. If you should not join the Collective Action, you should consider consulting with a lawyer soon, as your claims may be subject to the statute of limitations.

**22. Will I have any association with the Collective Action?**

If you do not join the Collective Action, you will not be a party to the Collective Action. You may, however, subpoenaed to provide testimony at depositions or trial as a non-party witness.

**MISCELLANEOUS**

**23. Is this Notice a legitimate document?**

This notice and its contents have been authorized by the Honorable Jesse M. Furman, a District Judge in the United States District Court for the Southern District of New York, located at 40 Foley Square, #1105, New York, New York 10007. The Court has not yet ruled on whether Plaintiff(s) or Defendants will prevail in the Collective Action.

Although the Court has approved of sending this Notice, the Court expresses no opinion on the merits of the lawsuit.

**24. What happens if I do nothing?**

If you do nothing in response to this Notice, you will not have joined the Collective Action and your rights and obligations will not be affected in any matter.



25. Can I get more details about this Notice or the Collective Action?

You may contact Mr. Kim's attorneys, Joshua Lim, Esq. or Seokchan (Sean) Kwak, Esq. from the law offices of Kim, Cho & Lim, LLC by calling (201) 585-7400 or by emailing [CollectiveAction@kcllawfirm.com](mailto:CollectiveAction@kcllawfirm.com).

**PLEASE DO NOT CALL THE COURT OR  
ANY GOVERNMENT ENTITY ABOUT THIS  
NOTICE OR THE COLLECTIVE ACTION.**

IF YOU RECEIVED THIS FORM AND WANT TO JOIN THE COLLECTIVE ACTION,  
YOU MUST COMPLETE THESE TWO STEPS:

1. Complete and sign the enclosed “Consent to Join” form;

AND

2. Return the completed and signed “Consent to Join” form to the below address no later than [Date 1].

Kim, Cho & Lim, LLC  
Attn: Seokchan Kwak, Esq.  
Re: DKCOSMETIC Collective Action  
460 Bergen Boulevard, Suite 305  
Palisades Park, New Jersey 07650

You may also fax the “Consent to Join” form to (201) 585-7422 or scan and email to [CollectiveAction@kcllawfirm.com](mailto:CollectiveAction@kcllawfirm.com).

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

GA HO KIM,

Plaintiff,

-against-

DKCOSMETICS; DKCOS CORP.; CLUB CLIO  
CORP.; CLUB CLIO NYC CORP.; JONG KYUN  
("JOHN") LEE and JOHN DOES 1-10 (said names  
being fictitious); and JOHN ROE CORPS. 1-10 (said  
names being fictitious),

Defendants.

Case No.: 1:19-cv-09079

CIVIL ACTION

**CONSENT TO JOIN**

By my signatures below, I represent that:

I worked or have worked for DKCOSMETICS, DKCOS CORP., CLUB CLIO CORP., and/or CLIO NYC CORP. as a non-exempt employee at some time between September 30, 2016 and the present, was paid a fixed salary, worked more than forty (40) hours in at least one workweek, but was not paid any overtime wages.

I want to join the above-captioned action as a plaintiff. I understand that the claims asserted in the above-captioned action are for unpaid overtime wages, unpaid spread of hours wages, liquidated damages, statutory damages, costs of the lawsuit and attorneys' fees.

I hereby consent, agree, and opt-in to become an "opt-in plaintiff" in the above-captioned action and be bound to any judgment by the Court or settlement reached in this action. I further agree to be represented by Kim, Cho & Lim, LLC in this action, and be bound by the terms of retainer between Plaintiff Ga Ho Kim and Kim, Cho & Lim, LLC. I represent that I had an opportunity to request a copy of the retainer agreement.

I hereby authorize the prosecution of the above-captioned action in my name and on my behalf by the above-named Plaintiff and designate the named Plaintiff as my agent to make decisions on my behalf concerning all matters pertaining to the above-captioned action. I hereby designate the named Plaintiff's counsel to represent me for all purposes of this action, including settlement. I further represent that the page annexed hereto contains an accurate and up-to-date contact information for myself.

I declare under the penalty of perjury that the foregoing is true and correct

Executed on \_\_\_\_\_, 20\_\_\_\_ x\_\_\_\_\_

Print:

**OPT-IN PLAINTIFF INFORMATION SHEET**

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Email Address: \_\_\_\_\_

Telephone Number: (        )        -

Alternate Phone Number (if applicable): (        )        -

Dates of Employment with Defendants (best to your recollection)

Start: \_\_\_\_\_, 20\_\_\_\_

End: \_\_\_\_\_, 20\_\_\_\_

Breaks in Between the Dates of Employment

Break Start: \_\_\_\_\_, 20\_\_\_\_

Break End: \_\_\_\_\_, 20\_\_\_\_

Please tell me anything in particular that you think may be distinctive about your case:

<u>Return to:</u>	
By mail:	Kim, Cho & Lim, LLC 460 Bergen Boulevard, Suite 305 Palisades Park, NJ 07650
By Email:	<a href="mailto:CollectiveAction@kclawfirm.com">CollectiveAction@kclawfirm.com</a>
By Fax:	(201) 585-7422